Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services	)	WT Docket No. 02-381
	)	
2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services	)	WT Docket No. 01-14
	)	
Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation	)	WT Docket No. 03-202

COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The National Telecommunications Cooperative Association (NTCA)[1] submits these comments in response to the Commission's Notice of Proposed Rule Making (NPRM) in

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

the above-referenced docket.[2] NTCA's supports the "keep what you use" approach to spectrum licensing. NTCA believes that "keep what you use" is consistent with Commission goals and polices, is compatible with the Commission's substantial service renewal rules and, most importantly, would help to get more spectrum-based services to rural consumers.

I. NTCA'S MEMBERS ARE ACTIVE WIRELESS PARTICIPANTS

Through the comment process, the Commission seeks to develop a more comprehensive understanding of the ways in which the secondary markets process may be insufficient to promote access to spectrum. While NTCA does not gather information from its members on a granular level, we do have some basic information about our members' wireless needs and obstacles. NTCA recently completed its annual wireless survey.[3] More than 100 small rural companies responded from nearly 30 states. Respondents providing wireless services ranged in size from approximately 700 wireless customers to more than 18,600. The heterogeneity in size and geographic location mirrored that of NTCA's membership as a whole.

NTCA's survey quantified the immediate need and desire of our members for more spectrum in rural areas. While 57% of survey respondents indicated that they currently hold at least one wireless license, respondents indicated they would prefer

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[2] In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation, WT Docket No. 03-202, *Notice of Proposed Rulemaking*, (released Sept. 27, 2004. (NPRM)

[3] *See*, NTCA's 2004 Wireless Survey Report, www.ntca.org

access to additional licensed spectrum. Concerns that threatened future wireless plans included rural carriers' inability to obtain spectrum at auction and the lack of a level playing field in the regulatory arena.

While 10% of survey respondents indicated that they had acquired spectrum in the past year, this number is down significantly from the 2003 response of 23%.[4] And despite the recent changes to the spectrum leasing rules, the number of carriers who entered into negotiations to acquire spectrum was also down from 11% to 8%.

II. SECONDARY MARKETS DO NOT SATISFY RURAL CARRIER NEEDS FOR ADDITIONAL SPECTRUM

The Commission seeks to identify the specific nature and extent to which its secondary markets rules are working. NTCA does not know exactly how many potential wireless providers have sought access to spectrum either through partitioning, dissaggregation, or spectrum leasing. We do know antecdotally that the process can be lengthy, burdensome, and often, unsuccessful. Rural carriers tell us that large carriers are unwilling to work with them and frequently neglect to respond to inquiries. One large carrier in particular has informed some NTCA members that their rural service territory serves too few people to be of interest for an agreement. Members describe spectrum leasing opportunities as "virtually nonexistent." While secondary markets may be useful tools for rural carriers interested in serving a portion of larger carriers' service territories, to date the opportunity has been available for only a handful of carriers. More opportunities may materialize after large carriers determine how they will use particular

[4] The survey did not ask respondents how they acquired the spectrum.

spectrum, what portion of the spectrum will never yield a sufficient return on investment and is therefore expendable, and for what price they are willing to part with it. In some areas and particularly for the most valuable spectrum, this process may take decades. Meanwhile, rural carriers interested in serving rural consumers will receive, or not receive, spectrum at the whim of a large carrier.

III. THE "KEEP WHAT YOU USE" LICENSING APPROACH WILL PUT SPECTRUM IN THE HANDS OF CARRIERS MOST LIKELY TO USE IT

Rural carriers want and need additional spectrum to provide the services their customers demand. The "keep what you use" approach will free up some additional spectrum. NTCA believes that any time spectrum is licensed according to large geographic areas,[5] unused spectrum should revert back to the FCC for re-licensing after giving the licensee a reasonable period of time to build out the area.

A. Rural Carriers have the Incentive to Serve Rural Communities

In its NPRM, the Commission quotes large carriers arguing against "keep what you use." The large carriers believe that if they do not have the financial incentive to build out an area, there is no reason to believe that new licensees would be any more able

[5] The FCC points out in FN 467 that it is unlikely to "introduce regulatory disparity" and differentiate between large and small licensed areas. NTCA submits that the differentiation is not a regulatory disparity. Under a large geographic area-licensing scheme, licensees may receive the spectrum rights to areas they want to serve and areas they have no intention of serving. If spectrum is already licensed according to small areas, licensees bid on spectrum for only the areas they intend to serve. Large license territories can also be broken into smaller license territories for re-licensing. For example, unserved MSAs/RSAs within a larger MEA could revert to the Commission for re-licensing. It is difficult to further partition an already small geographic area. Further, smaller licensing areas that remain unserved are generally sparsely populated. As a result, if significant portions of small geographic areas remain unused, the licensee faces the much larger danger of failing the substantial service license renewal requirements.

If the Commission determines that "keep what you use" will apply to small geographic license territories, the Commission's policies must recognize that small carriers serving RSAs need more time for build out than large carriers serving MSAs. Small carriers serving rural areas lack access to the capital of large carriers and need additional time to successfully implement their business plans.

to serve the area.[6] The large carriers argue that if it was economically beneficial for them to deploy services in a particular area, they already have the incentive to do so without regulatory intervention. This large carrier argument is a prime example of the different incentives driving large carriers and small carriers. Large carriers ignore the less dense and less lucrative markets because it is easier to make quick profits in densely populated areas or high usage corridors. Their cost-benefit analysis does not include a look at the needs of a particular community. If they can make enough money by serving an area, or freeing the spectrum, they will do so. If it's not financially worth their trouble, they will not.

Small carriers, in contrast, are situated in the communities they serve. While they also seek to turn a profit, their primary goal is to serve the community. Half of NTCA's members are organized as cooperatives. That means the community owns the company. A cost-benefit analysis includes a look at the rural community's needs. What may be considered a longer term and too risky investment to a large carrier, can be a necessary one to a rural carrier. Wireless carriers that are not willing to risk their capital in rural areas should not also be permitted to hold the unused spectrum hostage.

B. A "Keep What You Use" Licensing Approach will Result in More Rural Consumers Receiving Service

The ultimate result of a "keep what you use" approach is more rural consumers receiving more wireless service. Large carriers with unused spectrum will build out an

[6] NPRM ¶ 153.

area, release the spectrum for someone else to use in the form of partitioning, disaggregation or leasing, or let it revert to the FCC for someone else to use.

Currently, if a large carrier's business plan does not include serving a rural community, within a licensed service area there is no incentive for it to allow someone else to do so. There are costs involved with negotiating with another carrier to make spectrum available in secondary markets and the financial gain may not be worth the trouble for the large carrier. It may make more financial sense for the large carrier to just hold on to the spectrum at no cost. The company is not penalized, but the consumer is.

The consumer will be served when unused rural spectrum is freed from the grips of the large carriers. The threat of termination of spectrum rights will make voluntary negotiations to free up fallow spectrum more likely. As the Commission recognizes, the "keep what you use" approach may provide that extra incentive for a large carrier otherwise unwilling to enter negotiations with a rural carrier interested in the spectrum. The threat of losing the spectrum is an additional factor the large carrier would consider when it does its cost-benefit analysis determining what it will do with the spectrum. Whether unused spectrum is made available in a secondary market, or if it reverts to the Commission for re-licensing, the consumer benefits.

The large carriers argue that they will be forced to make the "Hobson's choice" of making uneconomic investments or forfeiting their licenses in rural areas. They also complain that the "keep what you use" approach may strip them of legitimate business opportunities, such as the ability to lease excess spectrum in the secondary markets. In truth, no one will be forced to make uneconomic decisions or be stripped of business opportunities. Spectrum would revert to the Commission only after licensees have had ample opportunity to build out their service territory or engage in secondary market transactions.[7] The Commission's analysis in determining whether unused spectrum will be relicensed should include a look at market forces, including demand and the availability of technology to use the spectrum, and the properties of the spectrum itself. Reversion rules should not apply to licenses that have not been built out due to the general unavailability of equipment for the services authorized on the spectrum.

IV. "KEEP WHAT YOU USE" IS CONSISTENT WITH THE LAW AND PRIOR FCC POLICY

The "keep what you use" approach to spectrum licensing is consistent with the law and the FCC's own policies. Section 309(j) of the Communications Act of 1934, as amended, instructs the Commission to promote the deployment of new technologies, products and services for the benefit of the public, including, specifically, those residing in rural areas.[8] The Commission is also charged with avoiding excessive concentration of licenses and disseminating licensing among a wide variety of applicants, including small businesses and rural telephone companies.[9] The "keep what you use" approach clearly helps satisfy these statutory directives by putting otherwise unused spectrum into the hands of small and rural carriers who will use it to serve rural communities.

[7] The "keep what you use" approach should apply both to spectrum that is currently licensed and to spectrum that will be licensed. Upon termination of the licensing term, the public owns the spectrum, not the licensees. The Commission merely gives out the rights to use the spectrum. Licensees should not be permitted to let spectrum lie fallow to the detriment of the public.
[8] 47 U.S.C. § 309(j)(3)(A).
[9] 47 U.S.C. ¶309(j)(3)(B).

The Commission, especially Chairman Powell, has been very much focused on rural wireless broadband deployment. Commissioner Powell said it well in his February 2004 speech to the Kansas Rural Broadband and Telemedicine Summit: "As the pace of broadband deployment continues to accelerate, we must work together to ensure that individuals living in rural America are not left behind in the digital migration. Rural America in some ways has the most to gain from broadband deployment." In May 2004 at the FCC's Wireless Broadband Forum, Chairman Powell declared wireless deployment to be "vital" to rural broadband deployment. A common theme throughout the speeches and prior FCC decisions is that spectrum policies are intended to benefit the public, not any one individual company. If rural consumers are left unserved by those carriers who hold licenses to serve them, the licenses should go to someone who will use them. A "keep what you use" spectrum policy is good for rural America.

V. CONCLUSION

In this proceeding the Commission is looking for ways to "modify its policies to promote the further development and deployment of [spectrum-based] services to rural areas."[10] The "keep what you use" approach to spectrum licensing falls squarely within the Commission's intent. It will free up spectrum that would otherwise lie fallow, primarily in rural areas. If adopted, "keep what you use" will force large carriers with unused spectrum to either make arrangements for that spectrum to be used, or let it revert to the Commission for re-licensing to another carrier with the desire and incentive to use

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[10] Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 023-381, Notice of Inquiry, ¶ 1 (rel. December 20, 2002).

it. Either way, the consumer benefits due to increased access to spectrum-based services. NTCA supports "keep what you use."

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

By: _/s/ L. Marie Guillory____
L. Marie Guillory
(703) 351-2021

By: _/s/ Jill Canfield________
Jill Canfield
(703) 351-2020

Its Attorneys

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
703 351-2000

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CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in WT Docket No. 02-381, WT Docket No. 01-14, WT Docket No. 03-202, FCC 04-166, was served on this 14th day of January 2005 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail Malloy
Gail Malloy

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554

Best Copy and Printing, Inc.
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554